

STATE OF ILLINOIS
ILLINOIS STATE BOARD OF EDUCATION
HARRY A. BLACKBURN, HEARING OFFICER

IN RE: APPEAL OF)
WEST HARVEY-DIXMORE) No. 07 GR 01
SCHOOL DISTRICT 147)

RECEIVED
MAR - 7 2011
GENERAL
COUNSEL

NOTICE and MOTION

To:

Darren Reisberg, General
Counsel
State Board of Education
100 West Randolph, 14-
400
Chicago, IL 60664-0295

Harry A. Blackburn,
Administrative Law Judge
P.O. Box 34
Joliet, IL 60434

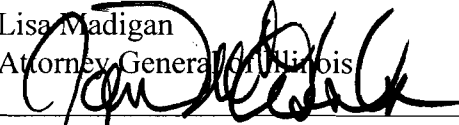
Anthony J. Scariano
Scariano, Himes and
Petrarcha, Chtd.
180 North Stetson Avenue,
Ste. 3100
Chicago, IL 60601-6714

**Notice of Settlement by Agreement of the Parties, Request for Entry of an Order of
Dismissal with Prejudice**

Please take notice that as of March 7, 2011, the parties have resolved the dispute by Settlement Agreement. A copy of the agreement, signed by all parties and counsel, is attached to this motion and an original is simultaneously conveyed to all parties of record.

Based upon the conveyance of the signed agreement, the ISBE requests that the Motion to Dismiss the Hearing, made orally by counsel for the School District at the last telephone conference held February 28, 2011, be sustained and an appropriate order be entered *instanter* dismissing the case at bar, with prejudice and without further proceedings.

Respectfully submitted,

Lisa Madigan
Attorney General of Illinois
By: 
James McCracken
Assistant Attorney General

PROOF OF MAILING

I, James McCracken, the attorney, served this notice together with the attached appearance by mailing it to the persons listed in the U.S. Mail on or before 5:00 p.m. March 7, 2011.


James McCracken
Assistant Attorney General

LISA MADIGAN
Attorney General of Illinois
100 West Randolph, 13-210
Chicago, IL 60601, 312-814-6139

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

The Illinois State Board of Education (“**ISBE**”) and The Board of Education of West Harvey-Dixmoor School District 147 (“**School District**”) (collectively, the “**Parties**”) hereby enter into this Settlement Agreement and Mutual Release (“**Agreement**”) on the date and year hereinafter executed by the Parties.

RECITALS

On September 29, 2005, ISBE notified School District of its intention to audit the School District’s expenditure and accounting of funds received through fifty-eight (58) individual grants involving fourteen (14) federal and state grant programs for fiscal years 2003, 2004 and 2005;

On October 17, 2005 through November 18, 2005, ISBE commenced audit fieldwork at School District’s administrative offices in West Harvey, Illinois, and thereafter continued its audit work at ISBE’s offices in Springfield, Illinois;

On July 18, 2006, ISBE issued its Final Audit Report for fiscal years 2003, 2004 and 2005 to School District, which concluded that \$2,243,539.00 of the School District’s claimed grant expenditures in fiscal years 2003, 2004 and 2005 were unallowable. The Final Audit Report is a business record in the custody and control of the ISBE, attached hereto as **Exhibit** “A”, and incorporated herein by reference;

On August 7, 2006, ISBE notified School District pursuant to Section 8 of the Illinois Grant Funds Recovery Act (“GFRA”), 30 ILCS 705/8, of its intent to recover a total amount of \$2,243,539.00 of School District’s claimed grant expenditures for fiscal years 2003, 2004 and 2005 (the “Disallowed Expenditures”);

On August 17, 2006, ISBE demanded that School District return the amount of the disallowed expenditures, which School District did not repay.

On August 17, 2006, ISBE requested School District to return the Disallowed Expenditures in quarterly installments from October 1, 2006 through June 15, 2009;

On September 1, 2006, School District, through its counsel, filed a written request for hearing with ISBE pursuant to Section 8(b) of the GFRA in relation to ISBE's Final Audit Report and the Disallowed Expenditures. The Request for Hearing is a business record in the control and custody of the ISBE, attached hereto as Exhibit "B", and incorporated herein by reference;

On April 25, 2007, pursuant to the GFRA and Part 475 of Title 23 of the Illinois Administrative Code, ISBE issued a Notice of Hearing to School District setting a hearing date and place of May 30, 2007 at the Thompson Building in Chicago, and appointing Harry A. Blackburn as the hearing officer. The hearing is captioned *In Re: The Appeal of West Harvey-Dixmoor School District No. 147*, No. 07-GR-01, (the "Administrative Proceedings"), the Notice of Hearing is a business record in the control and custody of ISBE, attached hereto a Exhibit "C", and incorporated herein by reference;

In order to avoid the cost, expense, burden and delay of further litigation, the Parties now wish to compromise and settle all disputes between them that are based on, arise out of, relate to, or are in any manner connected with the Grants, the Final Audit Report and/or the Administrative Proceedings, exclusively on the terms and conditions set forth in this Agreement, without any admission of liability by the Parties;

WHEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. **School District Voluntarily Dismisses Hearing with Prejudice** Within three (3) business days after this Agreement has been executed by the Parties, School District shall

advise the hearing officer in writing of its voluntary dismissal with prejudice of the Administrative Proceedings.

2. **Waiver** By executing this Agreement School District acknowledges, understands and agrees that it has voluntarily, expressly and unequivocally waived any and all rights it had or may have to:

- (a) Contest and object to the findings and conclusions in the Final Audit Report;
- (b) Contest and object to the subject matter jurisdiction of ISBE or the Hearing Officer in the Administrative Proceedings;
- (c) Contest and object to the appointment of Hearing Officer Harry A. Blackburn to preside over the Administrative Proceedings;
- (d) Contest and object to the application of the Grant Funds Recovery Act, 30 ILCS 705/1 *et seq.*, to the grants identified in the Final Audit Report;
- (e) Contest and object to ISBE's selection of outside counsel with respect to the Administrative Proceedings;
- (f) Conduct discovery during the Administrative Proceedings;
- (g) Present testimony, evidence and/or argument at a final hearing or otherwise in the Administrative Proceedings;
- (h) Contest and object to the Hearing Officer's dismissal of the hearing;
- (i) Contest and object to the terms and conditions of this Agreement;
- (j) Appeal or otherwise contest any aspect of the Final Audit Report, including, but not limited to, by filing an action under the Administrative Review Law, 735 ILCS 5/3-101 *et seq.*;
- (k) Enjoin the enforcement of any aspect of this Agreement;
- (l) Hearing on the merits.

3. **Implementation of New Grant Program Safeguards** As a condition of settlement by ISBE, School District has agreed to implement additional safeguards with respect to its participation in any federal and state grant fund programs. The safeguards set forth below shall remain in effect through Fiscal Year 2014 (i.e., June 30, 2014). Specifically, as a condition of settlement, School District must implement the following safeguards by the deadlines set forth below:

A. **Grant Director** Starting July 1, 2011, School District shall employ, at its own expense, an individual to serve as the Grant Director for the School District. The Grant Director shall report directly to the School District Superintendent, and shall be responsible for supervising and coordinating all federal and state grant program administration, including, but not limited to, applications, certifications, record keeping, disbursements, accounting, and reporting with respect to all such programs by School District; and

B. **Monthly Account Reconciliations** For the month starting July 1, 2011, School District shall perform monthly reconciliations of all grant program accounts to the School District's general ledger, which shall be completed and closed by no later than the fifteenth (15th) day of the following month; and

C. **Training** Effective July 1, 2011, School District shall arrange, at its own expense, to provide at least eight (8) hours per Fiscal Year of on-site training and continuing education relating to federal and state grant program administration to each employee (e.g., administrative and/or executive) involved in administering any federal or

state grant program for School District and all board members. Within 30 days of the close of each Fiscal Year, School District shall certify in writing to ISBE's General Counsel its compliance with this requirement by providing the names and positions of each employee and all board members and the dates on which they received training; and

D. **Third Party Monitor** By no later than July 1, 2011, School District shall be under contract with and pay for an independent third party (the "**Monitor**") who shall monitor all aspects of School District's participation in all federal and state grant programs, including, but not limited to: (i) oversight of the appropriateness of School District grant fund expenditures in light of federal and state laws, rules and regulations governing applicable grant program intent; (ii) oversight of the monthly reconciliation of all grant program accounts to the general ledger; and, (iii) oversight of the adequacy of on-site training and continuing education provided to School District employees. By no later than June 1, 2011, School District shall inform ISBE whom it has selected to serve as the proposed third party Monitor, including his or her qualifications. Selection of the Monitor shall be subject to ISBE's approval, which shall not be unreasonably withheld. The Monitor shall send a Quarterly Status Report on his or her activities to ISBE's General Counsel.

4. **Payment to ISBE** Upon voluntary dismissal of the hearing, School District shall be obligated to pay ISBE the total sum of One Million Three Hundred Thousand U.S. dollars (\$1,300,000.00) (the "**Final Recovery Amount**") in accordance with the installment payment schedule attached hereto as Exhibit "D" (the "**Installment Payments**"). Each of the Installment Payments owed by School District to ISBE from April 1, 2011 through March 1, 2014 shall be withheld by ISBE from General State Aid payments and future federal and state grant funds

administered by ISBE otherwise payable to School District and applied toward each of said month's Installment Payments reflected in Exhibit "D". School District shall remain obligated to pay each Installment Payment (and if called for under the terms of this Agreement, all or any portion of the Remaining Balance Owed referenced in Exhibit "D", regardless of any increase or decrease in General State Aid to School District in the future.

5. **Default and Confession of Judgment** If School District fails to comply with the terms and conditions of this Agreement including, but not limited to, the conditions set forth in Paragraph 3 above and payment of all Installment Payments reflected in Exhibit "D", then ISBE shall have the right to declare, by written notice to School District, that (a) School District is in default and (b) any Remaining Balance Owed as referenced in Exhibit "D" is accelerated, due and payable immediately.

In the event of its default, School District confesses judgment in favor of the ISBE in the Remaining Balance Owed. The Remaining Balance Owed shall be determined exclusively by the affidavit of the ISBE attesting to the unpaid balance. ISBE may pursue enforcement and collection of the Remaining Balance Owed from School District by any means permitted by law. ISBE may, in its sole discretion, immediately use any one or a combination of the following measures to secure payment of any Remaining Balance Owed:

- (a) Offset against existing grants from, or future grants to be made by, ISBE to School District;
- (b) Authorize the offset from existing grants or grants to be made by other grantor agencies to or for the benefit of School District;
- (c) Authorize the Comptroller to offset from any future payment of funds administered by the Comptroller for payment to the grantee School District, including, but not limited to, distributions of appropriated funds for General State Aid and payment of refunds to School District;

- (d) Remove School District from any of ISBE's programs and forbid School District's participation in any such future grant programs for a period not to exceed two years.

School District knowingly, expressly and unequivocally waives any claim, defense or objection, whether procedural or substantive, that it may have to any of the foregoing actions taken by ISBE set forth in this paragraph 5.

6. **No Waiver of Rights by ISBE** Any delay by ISBE in exercising any right or remedy upon a default by School District under this Agreement shall not impair the right or remedy or constitute a waiver of such right or remedy or acquiescence in School District's default.

7. **Presentment of Findings** Without making any admission of liability, the Parties expressly agree that this Agreement is entered into in good faith and there is a good faith basis for entering into this Agreement consisting of substantial evidence in the record, including, but not limited to, the Final Audit Report. The Parties voluntarily, expressly and unequivocally waive any obligation to present findings of fact and conclusions of law in support of this Agreement.

8. **No Waiver of Sovereign Immunity** This agreement shall not be construed to constitute a waiver of sovereign immunity of the State of Illinois, the Illinois State Board of Education, or by any other agency, department, arm, agent, or employee of the State of Illinois.

9. **Investigation** The Parties have read this Agreement and have been fully informed and have full knowledge of its terms, conditions and effects, and they have, either personally or through their attorneys, fully investigated to their full satisfaction the facts relating to the Grants and the Final Audit Report. The Parties stipulate that no promise or inducement has been offered or made except as set forth herein, and that this Agreement is executed of their free act and deed without reliance on any statement or representation. The School District knowingly,

expressly and unequivocally waives any contention that it lacked sufficient access to certain documents that had been seized by one or more agents of the Cook County State's Attorney's Office in or about January 2007 from the School District and/or from any of its current or former board members, officers, directors, superintendents, agents, employees or attorneys.

10. **No Admission of Liability** This Agreement is a compromise of a disputed claim and neither this Agreement nor any representation made in it, or exchange of any consideration made by virtue of it, shall be construed as admitting the merit or lack of merit of any claim or defense, whether asserted or unasserted, that is based on, arises out of, relates to, or is in any manner connected with the Grants, the Final Audit Report and/or the Administrative Proceedings.

11. **Costs and Attorneys' Fees** Each Party shall bear their own attorneys' fees, costs and expenses in relation to all matters associated with the Administrative Proceedings, including, but not limited to, the negotiation and execution of this Agreement and entry of the Order.

12. **Applicable Law** This Agreement and the Order shall be governed, construed and enforced in accordance with, the laws of the State of Illinois. This Agreement shall be construed as a whole and shall not be construed strictly for or against any of the Parties.

13. **Severability** Whenever possible, each provision of this Agreement shall be construed and interpreted in such a manner so as to be valid and binding under the law, but if any provision of this Agreement shall be held to be prohibited by, or invalid under, Illinois law, such provision shall be invalid and ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining terms and conditions of this Agreement.

14. **Notices** All notices and documents to be delivered to any of the Parties shall be made by hand delivery or Federal Express overnight or USPS, and notice or delivery to the

following persons shall constitute satisfactory delivery to School District and ISBE, respectively:

West Harvey-Dixmoor School Dist. No. 147

Board of Education
West Harvey-Dixmoor School District. No. 147
191 West 155th Place
Harvey, Illinois 60426

Illinois State Board of Education

General Counsel
Illinois State Board of Education
100 West Randolph Street
Chicago, Illinois 60664-0295

15. **Entire Agreement** This Agreement constitutes the entire agreement between the Parties concerning its subject matter, and it supersedes any and all prior and/or contemporaneous agreements, memorandums, warranties, statements, representations, promises and understandings, whether written or oral, with respect to the subject matter hereof. It is expressly understood and agreed that this Agreement may not be modified in any respect, except by an instrument in writing, signed by all of the Parties.

16. **Authorization to Bind** School District shall provide ISBE with a duly authorized resolution of its board of education authorizing School District to enter into this Agreement. Each Party to this Agreement warrants and represents that the person executing this Agreement on its behalf is duly authorized to do so. Each signatory to this Agreement warrants and represents that he or she has been duly authorized to do so by the respective Party on behalf of which he or she has signed this Agreement.

17. **Counterparts** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all counterparts so executed shall constitute one agreement binding on the parties hereto, and notwithstanding that all of the parties are not signatory to the same counterpart. A facsimile copy of this Agreement (or counterpart thereof)

shall be treated as an original.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement and Mutual Release to be executed and effective on the date last set forth below:

ILLINOIS STATE BOARD OF EDUCATION

By: Christopher Koe Dated: 3/2/11

Printed: _____

Its: _____
Duly Authorized Representative

APPROVED AS TO SUBSTANCE and FORM:

By: James McCracken Dated: 3/2/11

James McCracken
Assistant Attorney General
100 West Randolph Street, 13-210
Chicago, Illinois 60664-0295

By: Darren Reisberg Dated: 3/2/11

Darren Reisberg
General Counsel
Illinois State Board of Education
100 West Randolph Street
Chicago, Illinois 60664-0295

**WEST HARVEY-DIXMOOR SCHOOL
DISTRICT NO. 147**

By: J.C. Smith
Printed: J.C. Smith
Its: Board President
Duly Authorized Representative

Dated: 1-27-2011

APPROVED AS TO SUBSTANCE and FORM:

By: [Signature]
John J. Murphy
SCABIANO, HIMES AND PETRARCA
Two Prudential Plaza, Suite 3100
180 North Stetson Avenue
Chicago, Illinois 60601-6714

Dated: 1-27-11

EXHIBIT D

INSTALLMENT PAYMENTS

<u>Due Date</u>	<u>Installment Payment Amount</u>	<u>Remaining Balance Owed</u>
		\$1,300,000
Paid	\$380,000.00	\$920,000.00
April 1, 2011	\$25,555.56	\$894,445.44
May 1, 2011	\$25,555.56	\$868,888.88
June 1, 2011	\$25,555.56	\$843,333.32
July 1, 2011	\$25,555.56	\$817,777.76
August 1, 2011	\$25,555.56	\$792,222.20
September 1, 2011	\$25,555.56	\$766,666.64
October 1, 2011	\$25,555.56	\$741,111.08
November 1, 2011	\$25,555.56	\$715,555.52
December 1, 2011	\$25,555.56	\$689,999.96
January 1, 2012	\$25,555.56	\$664,444.40
February 1, 2012	\$25,555.56	\$638,888.84
March 1, 2012	\$25,555.56	\$613,333.28
April 1, 2012	\$25,555.56	\$587,777.72
May 1, 2012	\$25,555.56	\$562,222.16
June 1, 2012	\$25,555.56	\$536,666.60
July 1, 2012	\$25,555.56	\$511,111.04
August 1, 2012	\$25,555.56	\$485,555.48

September 1, 2012	\$25,555.56	\$459,999.92
October 1, 2012	\$25,555.56	\$434,444.36
November 1, 2012	\$25,555.56	\$408,888.80
December 1, 2012	\$25,555.55	\$383,333.25
January 1, 2013	\$25,555.55	\$357,777.70
February 1, 2013	\$25,555.55	\$332,222.15
March 1, 2013	\$25,555.55	\$306,666.60
April 1, 2013	\$25,555.55	\$281,111.05
May 1, 2013	\$25,555.55	\$255,555.50
June 1, 2013	\$25,555.55	\$229,999.95
July 1, 2013	\$25,555.55	\$204,444.40
August 1, 2013	\$25,555.55	\$178,888.85
September 1, 2013	\$25,555.55	\$153,333.30
October 1, 2013	\$25,555.55	\$127,777.75
November 1, 2013	\$25,555.55	\$102,222.20
December 1, 2013	\$25,555.55	\$76,666.65
January 1, 2014	\$25,555.55	\$51,111.10
February 1, 2014	\$25,555.55	\$25,555.55
March 1, 2014	\$25,555.55	\$0